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ABSTRACT

Significant 1970's federal legislation regarding American Indian education includes the Tribally Controlled Community Colleges Act; the Gifted and Talented Children's Act (Title IX Elementary and Secondary Education Act, or ESEA) which focuses in part on economically disadvantaged children; the Bilingual Education Act (Title VII ESEA); and the Indian Basic Education Act (IBEA) of 1978 (Title XI ESEA). The IBEA, the result of several years of Congressional work, mandates Bureau of Indian Affairs (BIA) reform in ten areas: academic standards, boarding situations, school construction, educational functions, funding, parental participation, education personnel, information management, technical assistance, and recruitment. The IBEA addresses student rights within BIA schools and Indian control of Indian educational affairs. The law also gives the Director of the Office of Indian Education Programs line authority over all education personnel. Teachers are removed from civil service and placed under local control. Possibly the greatest impact on Indian education would result not from these new laws, but from the transferral of Indian education to the newly created Department of Education. For Indian education to remain under the authority of the BIA the IBEA must be successful. (SB)

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An Analysis of Current Indian Legislation and Its Impact On Schools On or Near American Indian Reservations

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Prepared for
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INTRODUCTION

The bill that could perhaps receive recognition for the least noticed yet highest impact education legislation during the 95th Congress is the amendment to the Elementary and Secondary Education Act (ESEA) Reauthorization of 1978, Title XI of P.L. 95-561, which was signed into law by the President on November 1, 1978. First introduced in September of 1977, this Act is the culmination of two years of study of the Advisory Study Group on Indian Education, House Committee on Education and Labor.

While the Indian Basic Education Act is a very small part of the ESEA, it is an ostensible Christmas shopping list of reform of BIA education. The Indian Basic Education Act mandates BIA reform in 10 major areas: academic standards, boarding situations, school contruction, education functions, funding, parental input, education personnel, management information, technical assistance and recruitment. Most notably it gives the Director of the Office of Indian Education Programs line authority over all education personnel. Area Directors will no longer have this line authority. This only applies to education. Also notable is that teachers within the system are removed from Civil Service and placed under local control.

The Office of the Assistant Secretary for Indian Affairs was charged with managing policy and planning for implementation of the bill. Simultaneous with the signing of the law that office acknowledged to Tribal leaders that "*this legislation has broad and far-reaching implications for the entire Bureau, as well as to constituent tribes, in the*

areas of education and related services. The impact of this proposed legislation will be similar to that experienced under P.L. 93-638, the Indian Self-Determination and Education Assistance Act." At the same time the President was signing the Tribally Controlled Community Colleges Act (P.L. 95-471) which, after over five years of struggle and near closure, the small group of reservation-based Indian colleges were assured special authorization.

The BIA's first step toward implementing these new laws was to appoint 12 Task Forces comprised of Indian educators, Tribal officials and Federal employees. They are:

1) Amendment to P.L. 91-874 (impact aid);
2) JOM Funding Formula;
3) Education / Living Standards;
4) BIA Education functions;
5) Allotment Formulas;
6) School Boards;
7) Education Personnel;
8) Management Information System (Annual Report);
9) Education Policies;
10) Procedures and Practices;
11) Student Rights Group - P.L. 95-471; and
12) Tribally Controlled Community Colleges Bill.

Other Titles to ESEA that will have significant impact on Indian reservations, but to a probable much lesser degree than Title XI, are Title IX, Gifted and Talented Children's Act of 1978 (Part A). The authorization for FY 79 is $25 million, and increases for each of the

next five years. The Congressional Report finds that this nation's greatest resource is its gifted and talented children. Notably, now Indian Tribes may be considered as Local Education Agencies--a coup for tribal control of education. The Gifted and Talented definition is children and youth in school possessing demonstrated or potential abilities that give evidence of high performance capabilities in intellectual, creative, academic leadership or the arts and that to develop these talents requires special services not ordinarily provided by the school. A 1% set-aside includes BIA schools, but is shared with Trust territories and Department of Defense overseas schools when the total Appropriation exceeds $15 million. A major emphasis of this Title is on serving the economically disadvantaged child. The other important Title is the Bilingual Education Act, Title VII, P.L. 95-561. Of the $135 million disbursed by OBE in FY 76, $3.25 million was awarded to schools serving Indian children, and only 32 schools received those funds. In effect, less than 2.5% of available Title VII monies were directed toward Indian language needs, 27 languages were involved in the funded programs, leaving needs and interests in over 170 different Indian languages not being addressed under OBE initiatives.

However, under the new Act, the focus has shifted from students with "limited English speaking ability" to students with "limited English proficiency." The ultimate purpose of the Act has now been redefined. The previously stated goal--assisting students to progress effectively through the educational system--has been replaced by a more precise and measurable goal: to assist students in achieving competence in English.

Of particular interest is the mandate which allows the Commission of Bilingual Education to make payments directly to the applicants even if the applicant is a BIA school. The present practice of sending all Title VII awards through the Department of the Interior, and through the BIA hierarchy, is preempted by this provision...and most importantly, the definition of "limited English proficiency" has been expanded to include:

> "...in the case of American Indian students, individuals who come from environments where a language other than English has had a significant impact on their level of English language skills...."

in the sense further to be defined by the Commissioner through regulations.

Instances where the Indian child's English contains patterns of pronunciation and grammatical constructions traceable to the community's ancestral language, tradition will be sufficient for eligibility under this provision.

Now the content of regulations will need to be carefully reviewed, to make certain that Indian benefit allowed by the new Act does not get excluded after the fact. The Act will allow new opportunities for language related self-determination.

By Congress giving passage to the new provision of Title VII eligibility, Congress has given the Tribes a new statement of recognized need and recognized federal responsibility.

These laws will have immediate significant impact on Tribally controlled or served schools and Indian students.

The creation of a U.S. Department of Education in 1979 will most certainly have a more delayed, but perhaps the most significant impact

on the education of Indian children.

President Carter's plan to reorganize Government included the creation of a Cabinet-level Department of Education (S. 210, S. 991/ H.R. 13343, H.R. 2444), envisioned by the President's Reorganization Project (PRP) to house upwards of $10 billion in education-related programs formerly housed in other federal agencies, but primarily in the Department of Health, Education and Welfare. The Department as finally realized fell some $4 billion short of that mark.

Within this plan was the transfer of some $271 million in education programs for Tribes currently housed in BIA. While this was a small portion of the President's overall proposal, it is more than one-third of the entire BIA budget. Tribes saw this dismantlement effort as contraposition to effective maintenance of the Federal Government's Trust Responsibility to Indian Tribes. To counter, Tribes organized what was to come to be viewed as one of the most successful national lobby efforts ever seen. Against seemingly insurmountable Administrative and Congressional opposition at the onset, Tribes were able to achieve a legislative exclusion from that Department.

The President, however, retains the authority through other legislation to reorganize and transfer sub-Department agencies and Bureaus within the Federal Government. This authority runs simultaneous to Administrative terms of office. The current Administrative authority will expire in early April 1980, but subsequent Administrations will no doubt have renewed inherent authority to dismantle any division of the BIA.

With this situation it is even more imperative that Title XI, the

Indian Basic Education Act, succeed.

The Congressional and Administrative climate appears to be that success of this last effort at BIA reform of education is tantamount to subsequent transfer of education to the new Department of Education if it fails.

Brief Background of Legislation

The Snyder Act of 1921 authorizes all appropriations for education from the BIA (P.L. 67-85). The basis for Johnson O'Malley programs is the original authorizing legislation of 1931 and as amended in 1934 (P.L. 86-533). Impact Aid was enacted in 1950 (P.L. 81-874), and its intent was to generate monies for school districts servicing students from non-tax base land (in the case of Indians, Federal trust land). The next special legislation that was enacted for Indians was in 1972. That year, the Indian Education Act (P.L. 92-318) established an Office of Indian Education within the U.S. Department of Health, Education and Welfare (DHEW) with a Commissioner and fifteen-member Presidentially-appointed Indian Advisory Board. The budget in the first year of operation was under $18 million, approaching $90 million in FY 80. What is most notable about P.L. 92-318 is the definition of "Indian" within that law. The generous definition legislatively expanded special eductional services formerly restricted to members of Tribes officially recognized by the U.S. Department of the Interior to essentially anyone who self-identified as an Indian.

This small and unique office and its controversial service population have come under many criticisms since 1972. Simultaneously, Interior Department's Office of Indian Education Programs, along with nearly all Indian services administered by BIA, were under close scrutiny and

severe criticism through nearly continual GAO Reports and Congressional appropriations actions. The U.S. Congress during the period of 1972-1978 was structured to focus on Indian services. On the special committee in one chamber, the Senate Select Committee on Indian Affairs, sat five advocates for Indians under the outspoken leadership of James Abourezk (D-S.D.). In addition to the Housing Interior Committee in the other chamber, a special Advisory Study Group on Indian Education was created under the Committee on Education and Labor in 1977.

It was from this Congressional climate that remedy for what was perceived to be the gross inadequacies of Indian education began to take place. For nearly two years, Congress, and particularly the House Advisory Study Group, held hearings and drafted legislation that sought to comprehensively rectify all the ills of Indian education in one law. Understandably, because of the comprehensive approach of Congress compared to the diverse and unique educational situations of over 400 distinct Tribal and Alaska Native entities, the final bill in all its parts did not meet with the overwhelming approval of all Tribes affected. Many Tribes believed that the myriad of problems manifest in the huge bureaucratic system could not be so simplistically legislated away. Essentially, Congress had unsuccessfully attempted the same effect through its appropriations actions in the past. Nonetheless, the Indian Basic Education Act (IBEA) was added as an eleventh Title to the Elementary and Secondary Education Act's (ESEA) reauthorization, P.L. 95-561, and became law November 1, 1978.

Title XI

There are eleven major sections to Title XI, IBEA. These sections

of the law are under differing implementation deadlines.

The first section revises Impact Aid. Local Education Agencies are required to establish policies and procedures with respect to information received from Indian parents and Tribes. The intent of this section is to encourage parental involvement in all aspects of the 874 funded education programs for Indian children.

A step-by-step grievance procedure is detailed in the legislation including amounts of time for response. However, a major shortcoming of this section are the many stipulations under which the Commission of Education, DHEW, may waive the requirements of the law. For one of several examples, if the LEA fails to involve the parents in planning of programs under the law, monies are to be withheld. However, the Commissioner of OE/HEW reserves the right to continue monies if it would substantially disrupt "educational programs."

Ultimate decision-making authority lies with the Commissioner's discretion. For the Tribe, the final alternatives outlined in the law is to contract education services or have them provided by a BIA school. Notably, this contract authority was already existent in Title I, Determination and Education Assistance Act, prior to enactment of Title XI.

Two sections following amend Johnson O'Malley payments requiring the Secretary of Interior to develop an equitable distribution formula for supplemental program funds. Alternatives are sent to the Tribes and Alaska Villages and a formula shall be determined by tribal vote, each Tribe and Alaska Village having one vote regardless of size of Tribe. Basic support is also authorized through Parent Committees, not through the Tribe, to the LEA in instances where the Indian children's

education level is not equal to the non-Indian student's level.

Section 1121 requires the Secretary of Interior to establish basic education standards for children in Bureau and Indian-controlled contract schools. This section has the longest implementation time frame of all sections in the law, probably because of the complexity of the task. Initially, surveys and studies are to be conducted to reach the goal of establishing final standards within 18 months of enactment of the law. These studies shall consider: 1) academic needs; 2) local cultural differences; 3) type and level of language skills; 4) geographic isolation; and 5) appropriate teacher-student ratios.

Notably, here the tribal governing body has the authority to reject the standards if they are inappropriate or ill-conceived. The Secretary of Interior has ultimate authority to accept or reject revised standards and if the law does not allow for appeal of that decision, BIA is required to provide technical assistance in implementing the standards to the school boards at their request. The law is further required to provide the appropriate Committees of Congress with a detailed plan for bringing Bureau schools up to the level required by the standards. This plan must include cost estimates and time-lines and must be submitted each year with the budget request. The law authorizes monies "as necessary" to carry out this section.

Section 1128-1129 of the law calls for the first time establishment of fair and equitable funding procedures. It requires a series of defined cost factors be used in determining each Bureau and contract school's allocation. The intent of this section is to eliminate the past vast discrepencies in operation budgets from school to school with

allocations based more on influence than students' needs. There were already technical amendments to this section which will prevent too vast a drop in an overbudgeted school: the first year, no school is required to absorb more than a 10% reduction in its operating budget. This section gives authority to the "Agency Superintendent" through the school supervisor who is mandated by law to actively consult with the local school board of each school. Here again, it is important to note that the authority in this section differs. The school board and not the Tribal governing body is to be involved in the preparation of the financial plan. The school board has the authority to ratify, reject or amend any aspect of the plan as it sees fit. There is an appeal procedure for the school supervisor should he not agree with the school board's actions and the Agency Superintendent reserves final authority for determination. This section also precludes the use of 638 training and technical assistance monies unless such services are provided by a mutually-approved plan tranfering control of education from the Bureau to the Tribe. This section mandates the Secretary to make every effort to seek appropriations to meet these requests.

Last, but noteworthy under this section, is the provision for maintaining a fund to continue general education services when necessitated by "emergencies or unforseen contingencies." When monies are granted under this section the Secretary is required to report his award to the Congress.

The entire philosophy of this new law is in the next, very brief Section 1130. It requires the Bureau to facilitate Indian control of Indian affairs in all matters relating to education. Regretably, it

does not address the variances from section to section in where that control lies: the school board, the tribal governing body and the many override authorities left with federal decision-makers.

Section 1131 deals with the very complex situation of revamping education personnel to enable a carrying-out of these new education mandates within one-year's time. This section seeks to eliminate the bureaucratic encumbrances associated with employment by removing the requirement that applicants at a local level apply at the national level for a position; and further removing Civil Service encumbrances from BIA education positions. Here again, the "school board" is given near-authority in the hiring process by requiring the supervisor or Agency Superintendent to "consult" with them to allow them final determination on applicants for education positions.

The Agency Director has ultimate authority under this section to overturn local school personnel decisions, and the legislation expressly points out that it shall not be construed that school boards have any authority over or control of education.

This section also always allows for a waiver of Indian Preference, setting a new precedent in federal Indian legislation. On a more positive note, the prior stringent requirement of formal education credentials has been waived in the instances where such individuals may teach tribal culture or language. Current Civil Service education personnel reserve the right to elect to come under this new system if they so choose.

Because of past demonstrated inabilities on the part of the Bureau to provide accurate and comprehensive information, Section 1132 mandates

that a computerized system be established that will provide at a minimum information on: 1) student enrollment; 2) curriculum; 3) staff; 4) facilities; 5) community demographics; and 6) student assessment information. Because the Bureau has operated for 25 years without educational policies as operational guidelines, Section 1133 requires that such policies be established as rules and regulations. It is further mandated in the next section that all divisions of BIA administering any support service to education adhere to uniform operational procedures. This applies to such divisions as contracting, facilities management, budget and finance, procurement, property management and personnel.

The other sections of major importance are the requirement to establish by regulation parameters and assurances of student rights within BIA schools.

A final section requires the submission of an annual report to the Congress on the state of Indian education.

Under this Title XI are also contained minor amendments and a five-year reauthorization of P.L. 92-318, Title IV, the Indian Education Act. Several minor revisions to the law assist in clarifying the intent of P.L. 92-318 such as changing the term "children" to "students" and adding "culturally-related" when defining the special educational needs of Indian children.

But the most significant of the Title IV amendments is the mandate to define "Indian." The legislation requires that a study be conducted by the Department of Health, Education and Welfare (DHEW) in consultation with Indian tribes, national Indian organizations and the Secretary of the Interior. The deadline for this study is 1980 and hearings are currently underway across the country.